

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL LOUKAS #158249,

Plaintiff,

Case No. 2:07-cv-92

v.

Honorable Robert Holmes Bell

MICHIGAN DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on June 5, 2008. The Report and Recommendation was duly served on the parties. The Court received objections from the Defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

In their objections, Defendants state that the Magistrate Judge erred in recommending that Defendants' motion for summary judgment be denied. Specifically, Defendants claim that the Magistrate Judge improperly found that Defendants' "sole claim to qualified immunity is that they followed policy directives." Defendants state that this passage "calls into question whether the Magistrate Judge actually read the Brief supporting Defendants' summary judgment motion." However, Defendants subsequently state that they are non-policy making officers who relied "on a policy directive that has not been held unconstitutional." Such an argument is circuitous and

nonsensical. Moreover, as noted by the Magistrate Judge in the report and recommendation, there is a genuine issue of material fact with regard to whether Plaintiff's constitutional rights were violated. Therefore, qualified immunity is not available. Accordingly, the court finds Defendants' objections lack merit.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (Docket #33) is DENIED.

Dated: September 8, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE